

### REMARKS

Claims 1, 3-10, 13, 14, and 19-25 are now pending in this application, due to the addition of new, independent claim 25. Applicants wish to express their appreciation for the Examiner's recognition of allowable subject matter with regard to claims 3-10, 13, 14, and 22-24. Claims 6, 7, and 8 are objected to. Applicants have amended claims 6 and 7 to overcome the objections. Claim 8, however, has not been amended. The Examiner is respectfully directed to page 21, lines 6-13 of the specification for an explanation of the device orientations of claim 8. Briefly, claim 8 describes alternate orientations for an ear type clinical thermometer. In one claimed embodiment, the device is oriented such that the probe is inserted in the external auditory canal while being turned at an angle toward the rear portion of the person's head. By this orientation, the probe is inserted in a direction going from the opening of the external auditory canal to the back side of a the head of the person to be measured. In view of this clarification, the objection should be withdrawn.

Claim 1 is rejected under 35 USC 102(e), as being anticipated by Konno. Because Konno fails to disclose each and every feature recited in claim 1, the rejection is respectfully traversed. Claim 1 recites, in part, that the second side (opposite to the side from which the probe protrudes) has a substantially constant curvature along a direction perpendicular to a reference plane containing a center axis of the probe. Further, the center of curvature of this curved surface is located in the vicinity of a base end of the probe. Konno does not show these features.

Konno shows, as the Examiner kindly portrayed on the attachment to the Office Action, a "center of symmetry" about a center axis D, but not a "center of curvature" as required by claim 1 – the center of symmetry, or the center of a curved surface, is not necessarily identical to a center of curvature. The point F, as shown by the Examiner in Fig. 7, is definitely not a center of curvature of the curved surface. The Examiner does, in fact, refer to this as a center of symmetry, as this point may be on a symmetrical line of plane of the curved surface. Nevertheless, the feature relied on by the Examiner does not meet the requirements of claim 1. For that reason, Konno does not show each and every feature of claim 1 and the rejection of claim 1 should, therefore, be withdrawn.

Claims 19-21 are rejected under 35 USC 103(a) over Konno, alone. Because Konno does not provide any motivation to modify his own teaching to arrive at the invention of claims 19-21, the rejection is respectfully traversed. First, in order to modify a sole reference cited in support of a rejection under 35 USC 103(a), the Examiner must show where, in the reference, one of ordinary skill in the art would find motivation to modify the teaching of the reference, to arrive at the invention of claims 19-21. *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002). As well, the Examiner must identify specific teachings within the reference, to show why one of ordinary skill in the art would have believed such modification would have addressed the problem to be solved with a reasonable expectation of success. *Id.* The Examiner has not made such a showing. The Examiner has relied on the reference “in a broad sense” without identifying where Konno provides motivation to modify his own teachings to show the features missing from those required by claims 19-21. Further, since Konno does not teach each and every feature of claims 19-21, and without a specific teaching within the reference that would direct one of ordinary skill in the art to modify the disclosure of Konno, no *prima facie* case of obviousness has been created for applicants to rebut.

Moreover, Konno does not teach, disclose, or suggest a thermometer configured to be held in a variety of methods by the user, as the device of claims 19-21 does. Konno does not teach the specific restrictions on the arrangement of features on the thermometer, such as the switches, or the specific shape and other physical attributes of the face of the thermometer, as recited in claims 19-21. Absent a teaching found within Konno to modify his device in the manner recited in claims 19-21, one of ordinary skill in the art would not have known to modify Konno’s device to arrive at the applicants claimed device. For these reasons, the rejection of claims 19-21 under 35 USC 103(a) should be withdrawn.

Applicants, again, appreciate the finding that claims 3-10, 13-14, and 22-24 are in condition for allowance. Upon consideration of the amendments and remarks presented herein, the remaining claims should be found allowable as well, and a notice thereof is earnestly solicited.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment, captioned “**Version with markings to show changes made**”.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing 482842000500.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Please amend the following claims:

6. (Twice Amended) An ear type clinical thermometer according to claim 3 or 4, wherein the [indicators are] indicator is arranged on [both sides] each side of [the] a reference plane containing the center axis of the probe.

7. (Twice Amended) An ear type clinical thermometer according to claim 3 or 4, wherein the main body has a first side where the probe protrudes from the main body and a second side opposite to this side, the second side being constructed of a curved surface having a substantially constant curvature along a direction perpendicular to [the] a reference plane containing the center axis of the probe.

-- 25. (New) An ear type clinical thermometer comprising:

a main body configured to be held by hand at a time when an eardrum temperature is to be measured; and

a probe fixed to and protruding from the main body and configured to be inserted into an external auditory canal of a person whose eardrum temperature is to be measured, wherein:

the main body has a first side where the probe protrudes from the main body and a second side opposite to the first side and from which the user holds the main body, the second side forming a curved surface having a substantially constant curvature along a direction perpendicular to a reference plane containing a center axis of the probe, a center of curvature of this curved surface being located in the vicinity of a base end of the probe. --